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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

**SERENITY LANE, an Oregon corporation,  
Plaintiff,**

**v.**

**NETSMART TECHNOLOGIES, INC., a  
Delaware corporation, and SEQUEST  
TECHNOLOGIES, INC., an Illinois  
corporation,  
Defendants.**

**Case No.6:14-cv-38**

**COMPLAINT FOR BREACH OF  
CONTRACT AND DECLARATORY  
RELIEF  
JURY TRIAL DEMANDED**

Plaintiff SERENITY LANE ("SERENITY LANE" and "Plaintiff") alleges as follows against Defendant NETSMART TECHNOLOGIES, INC. ("NETSMART" and "Defendant"), and SEQUEST TECHNOLOGIES, INC., ("SEQUEST" and "Defendant") on personal knowledge as to Plaintiff's own activities and on information and belief as to the activities of others, as follows:

**PARTIES**

1. Serenity Lane is an Oregon corporation in the business of substance abuse rehabilitation.

2. Netsmart is a Delaware corporation with its principal office in Overland Park, Kansas, engaged in the business of providing totally integrated electronic medical records software.

3. Sequest was an Illinois corporation with its principal place of business in New York, engaged in the business of providing totally integrated electronic medical records software.

### **JURISDICTION**

4. The Court has jurisdiction pursuant to 28 U.S.C. § 1332.

5. Sequest employees came to Oregon to promote and sell its products to Serenity Lane. All agreements were entered into by Serenity Lane in Lane County, Oregon. All payments made by Serenity Lane to Sequest and Netsmart were made from Lane County, Oregon. Sequest employees came to Lane County, Oregon in an attempt to perform the terms of the contract. The software agreed to be provided to Serenity Lane was to be delivered and installed in Lane County, Oregon.

### **FACTS**

6. In November 2006, Serenity Lane entered into an agreement ("Agreement") with Sequest Technologies, Inc., whereby Sequest agreed to provide totally integrated electronic medical records software customized for Serenity Lane's use ("TIER Software"). Based on information and belief, Sequest was acquired by Netsmart in October 2011 and Netsmart now owes Serenity Lane the obligations of Sequest under the Agreement.

7. Serenity Lane has paid to Sequest and Netsmart the sum of \$518,308.41 for development, licenses and customization of the TIER software, promised by Sequest and Netsmart.

8. Sequest and Netsmart have never delivered and Serenity Lane has never received the TIER Software agreed to be provided by Sequest and Netsmart.

9. On November 21, 2013, Serenity Lane informed Netsmart they were ending the Agreement and would seek reimbursement of their damages.

10. Sequest and Netsmart have breached the Agreement by failing to deliver the TIER Software to Serenity Lane.

11. Serenity Lane has performed all obligations for its part under the Agreement.

**FIRST CLAIM FOR RELIEF**

12. Serenity Lane realleges and incorporates the allegations of Paragraphs 1-11.

13. As a result of Sequest and Netsmart's breach of the Agreement, Serenity Lane has been damaged in the sum of \$518,308.41 paid to Sequest and Netsmart; the sum of \$654,242.00 for time spent by Serenity Lane to perform its obligations under the Agreement; \$147,937.61 for computer hardware purchases which became obsolete or unusable as the result of the failure of Sequest and Netsmart to provide the TIER Software.

14. Serenity Lane has also been damaged in the sum of \$227,772.67 for pre-judgment interest on the sums paid to Sequest and Netsmart which continues to accrue at the rate of \$129.58/day until paid.

**SECOND CLAIM FOR RELIEF - UCC**

15. Serenity Lane realleges and incorporates the allegations of Paragraphs 1-11.

16. The TIER Software is a good, as that term is defined in ORS 72.1050.

17. Serenity Lane has paid Sequest and Netsmart for the TIER Software.

18. Serenity Lane has rejected the incomplete TIER Software, pursuant to ORS 72.6010. Serenity Lane has notified Netsmart of its rejection of the TIER Software.

19. Pursuant to ORS 72.7110 and ORS 72.7150, Serenity Lane seeks recovery of the price paid of \$518,308.41 together with pre-judgment interest on such sum in the sum of

\$227,772.67, together with per diem interest accruing at the rate of \$129.58/per day; for \$654,272.00 for the value of time spent by Serenity Lane to perform its obligations under the Agreement and \$147,937.61 for the cost of computer hardware purchased in anticipation of the Agreement which is now obsolete or unusable.

**THIRD CLAIM FOR RELIEF - DECLARATORY RELIEF**

20. Serenity Lane realleges and incorporates the allegations of Paragraphs 1-11.

21. Serenity Lane entered into a Software License Contract (“Contract”) in November 2006 in the form attached as Exhibit 1 and incorporated herein as though fully set forth.

22. Under the terms of the Contract, Serenity Lane agreed to be bound to the terms of the Contract upon “delivery and receipt of the TIER Software Product.”

23. Serenity Lane contends that the TIER Software Product was never delivered by Sequest or Netsmart or received by Serenity Lane for the reason that the TIER Software Product was never completed, was not useable and did not meet the requirements of the Contract for use by Serenity Lane.

24. Serenity Lane contends it is not bound to the terms of the Contract.

25. Serenity Lane, based upon information and belief, expects Netsmart to contend that the Contract is binding upon Serenity Lane.

26. Serenity Lane seeks this Court’s declaration that it is not bound by the Contract for the reason that the TIER Software Product was never delivered by Sequest or Netsmart or received by Serenity Lane.

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**FOURTH CLAIM FOR RELIEF**

**[In the alternative, in the event the Court declares that Serenity Lane is bound to the TIER**

**Software License Contract]**

27. Serenity Lane realleges and incorporates the allegations of Paragraphs 1-11.

28. Pursuant to the TIER Software License Contract (“Contract”), Sequest and Netsmart had the obligation to create a TIER Software Product including all computer software associated media and printed material and any online electronic documentation for the purpose of creating a totally integrated electronic record system customized for the use of Serenity Lane.

29. Sequest and Netsmart have failed to provide the TIER Software Product customized for Serenity Lane’s purposes and have failed to provide the associated media and printed materials or online electronic documentation of any useable product.

30. The TIER Software Product is not subject to repair or replacement by Netsmart. Pursuant to the terms of the agreement, Netsmart is obligated to refund the amount paid to it for the TIER Software Product in the sum of \$518,308.41.

31. Netsmart is further obligated to pay to Serenity Lane pre-judgment interest on the sums paid to Netsmart in the sum of \$227,772.67 together with per diem interest occurring thereafter at the rate of \$129.58/day.

**PRAYER FOR RELIEF**

WHEREFORE, Serenity Lane prays for a judgment against Netsmart and Sequest awarding to Serenity Lane the sum of \$1,548,260.69, plus interest at the rate of \$129.58/day for its First and Second Claims; for a declaration it is not bound to the terms of the Contract; or, in

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the alternative, for a judgment in the sum of \$746,081.08, plus interest at the rate of \$129.58/day, for its Fourth Claim, together with its costs and disbursements.

Respectfully submitted,

/s/ Dennis W. Percell

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